

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2015

CORAM :

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

WP.No.26939 of 2015  
MP.1 and 2 of 2015

M/s.Jeyyemaarr, represented by its  
Partner J.Jacob Mathew, Chennai ... Petitioner

Vs

- 1.The Commissioner of Customs,  
Chennai VIII Commissionerate  
Customs Broker Section, Custom House,  
No.60 Rajaji Salai, Chennai-1
- 2.The Assistant Commissioner of Customs,  
CB Section  
Customs House, 60, Rajaji Salai  
Chennai-1 ... Respondents

Prayer:- This Writ Petition is filed to issue a Writ of Mandamus to direct the 1st Respondent to renew the Custom Broker licence No.R644/CHA, as per the application dated 1.7.2015 of the Petitioner.

For Petitioner : Mr.A.K.Jayaraj

For Respondent : Mr.V.Sundareswaran, SC

ORDER

In this Writ Petition, the Petitioner seeks for a direction to the 1st Respondent to renew the Custom Broker licence No.R644/CHA, by considering his application dated 1.7.2015.

2. The case of the Petitioner is that the Petitioner is a Custom House Agent and he was issued with CHA licence under Section 146 of the Customs Act, which is valid upto 2015. Based on the investigation report of DRI, the Respondents alleged that during April 2011 to Separately 2013, Bill of Entries were filed by the Petitioner on behalf of

M/s.Shahi Foods, Chennai and M/s.High Regards International, Chennai, declaring the goods as biscuits, juices, confectionery, cheese, sausages and beverages without obtaining authorization and without verifying the antecedents, correctness and identity of their clients and violated the provision of Regulation 13(a), 13(b), 13(d), 13(e) and 13(k) of CHALR 2004 (Regulation 11(a), 11(b), 11(d), 11(e) and 11(k) read with Regulation 18(b) of CBLR 2013) that the said importers mis-declared the value and retain sale price to evade the custom duty and hence, the Petitioner was suspended from working/performing the customs related activities. The 1st Respondent without issuing any show cause notice as envisaged under Regulation 22 of CHALR, passed an order dated 19.11.2014, suspending the operation of CHA licence in terms of Regulation 19 of CBLR 2013. The suspension was made only on 19.11.2014, which is not within 15 days from the date of receipt of the report from DRI. The Petitioner filed written submissions dated 13.12.2014. Then, the 1st Respondent revoked the suspension order dated 19.11.2014 with immediate effect, accepting the delay of one year. Thereafter, the 1st Respondent issued a notice dated 23.12.2014 under Regulation 20, appointing inquiry officer for revoking the licence of the Petitioner and for forfeiture of the security or to impose penalty. Against the said notice, the Petitioner filed WP.12401 of 2015, wherein an order of interim of stay was granted on 24.4.2015, which is still in force. Since the licence was valid upto 3.9.2015, the Petitioner filed an application for renewal. Since no action was taken, this Writ Petition has been filed.

3. The learned counsel for the Petitioner contended that when any action is proposed under Regulation 20 (1), then the procedures prescribed under Clauses (1) to (8) of Regulation 22 has to be necessarily followed, which provides for issuance of notice within ninety days from the date of receipt of offence report and that the Petitioner had fully complied with Regulation 13 of CHALR 2004, which provides for verification of antecedents and credentials of the importers.

4. The learned Standing Counsel for the Respondents submitted that the licence of the Petitioner has been cancelled, as it was proved beyond doubt that the Petitioner has not carried out their business with due diligence and not complied with the Regulations under which the Petitioner was issued with the licence and therefore, the acts of the Respondents are legal and justifiable and prayed for dismissal of this Writ Petition.

5. This court heard and considered the submissions made by the learned counsel on either side and also perused the materials placed on record.

6. The suspension of CHA licence was made on 19.11.2014, which was not within 15 days from the date of receipt of the report from DRI. On the representation of the Petitioner, the suspension was revoked by order dated 23.12.2014, accepting the delay of one year. However, by notice dated 23.12.2014 under Regulation 20, it was proposed to impose penalty and to forfeit the security, which is also barred by limitation. Despite the same, it is the case of the Respondents that on intelligence, it was found that the Petitioner misdeclared and undervalued the goods and has violated the provisions of the CBLR.

7. In WP.No.12401 of 2015 filed as against the said notice, this court granted an order of interim stay on 24.4.2015, which is still in force. Since the licence is due to expire on 3.9.2015, the Petitioner also filed an application for renewal, which is pending consideration.

8. In 2014 309 ELT 433 Mad (A.M.Ahamed & Co. Vs. Commissioner of Customs (Imports) Chennai, it has been held in paragraph 28 as under:-

"28. But, what the first respondent has failed to take note of, is the fact that the revocation of licence now ordered by the first respondent, throws the petitioner out of business once and for all and deprives them of their very livelihood. Once the importer has escaped with a nominal fine on the ground that a true and full disclosure had been made, it would be unfair to impose the extreme penalty upon the petitioner. Therefore, the petitioner is entitled to succeed on both grounds. Hence, the writ petition is allowed and the impugned order is set aside. No costs. Consequently the M.P. is closed. "

9. However, without going into the merits of the case, since the stay granted by this court in the other Writ Petition filed by the Petitioner is still in force and the subject matter of the said Writ Petition is also to be considered on merits and the application for renewal is also pending, pending consideration of renewal application, the Respondents are directed to permit the Petitioner to continue his business operations. The renewal application of the

Petitioner shall be disposed of, on merits and in accordance with law, within a period of six weeks from the date of receipt of a copy of this order.

10. With the above directions, this Writ Petition is disposed of. No costs. Consequently, the connected MPs are closed.

Sd/-  
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Srcm

To:

- 1.The Commissioner of Customs,  
Chennai VIII Commissionerate  
Customs Broker Section, Custom House,  
No.60, Rajaji Salai, Chennai-1
- 2.The Assistant Commissioner of Customs,  
CB Section Customs House,  
No. 60, Rajaji Salai, Chennai-1

+1cc to Mr.A.K.Jayaraj, Advocate, S.R.No.65741

W.P.No.26939 of 2015

MG(CO)  
CA(17/12/2015)

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